

JOHN COYLE, Esq.
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Attorney for Plaintiffs.

**IN TH UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

NEFTALI MONTERROSA, ET AL.,

Plaintiff,

vs.

CITY OF VALLEJO, ET AL.,

Defendant.

Case No: 2:20-cv-01563-DAD-DB

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION TO
ENFORCE NONPARTY SUBPOENA
FOR PRODUCTION OF
DOCUMENTS**

Date: February 7, 2023

Time: 1:30 p.m.

Judge: Hon. Dale A. Drozd

PLEASE TAKE NOTE that on February 7, 2023, at 1:30 p.m. or as soon thereafter as the matter may be heard, before the Honorable Judge Dale A. Drozd, Plaintiffs will and hereby does move to enforce the subpoena served upon the Vallejo Police Officers Association.

Pursuant to Rule 251(e), because there "has been a complete and total failure to respond to a discovery request," the Plaintiffs bring this motion on fourteen days' notice without a joint statement regarding this discovery disagreement. Counsel for the parties met and conferred. No party opposes this request. The motion is based on this notice of motion, the accompanying memorandum of points and authorities, the entire record of the action, any oral argument as the Court may receive, and other matters that the Court deems just and proper.

1 DATED: 1/24/2023

2 Respectfully submitted,

3 /s/ John J. Coyle

4 JOHN J. COYLE

5 Attorney for Plaintiffs McELDREW
PURTELL

6 123 South Broad Street

7 Suite 2250

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9 (215) 545-8800

10 jcoyle@mceldrewpurtell.com

11 Carla M. Wirtschafter

12 Reed Smith LLP

13 1901 Avenue of the Stars

14 Suite 700

15 Los Angeles, CA 90067

16 310-734-5253

17 cwirtschafter@reedsmith.com

CERTIFICATE OF SERVICE

I, John J. Coyle, Esq., Counsel for Plaintiffs in this matter hereby certifies that a copy of the foregoing Notion of Motion and Motion to Enforce, as well as its attachments, including the Plaintiffs' Memorandum of Points and Authorities in Support of the Motion was sent via certified and electronic mail to Vallejo Police Officers Association at the address shown below:

Vallejo Police Officers Association
1040 Colusa Street
Vallejo, CA 94590

Michael L. Rains, Esq
MRains@rlslawyers.com

DATED: 1/24/2023

Respectfully submitted,

/s/ John J. Coyle
JOHN J. COYLE
Attorney for Plaintiffs
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Attorney for Plaintiffs.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NEFTALI MONTERROSA, ET AL.,

Plaintiffs,

vs.

CITY OF VALLEJO, ET AL.,

Defendant.

Case No: 2:20-cv-01563-DAD-DB

**MEMORANDUM IN SUPPORT OF
THE PLAINTIFFS' MOTION TO
ENFORCE A NONPARTY
SUBPOENA FOR PRODUCTION OF
DOCUMENTS**

Date: February 7, 2023

Time: 1:30 p.m.

Judge: Hon. Dale A. Drozd

MEMORANDUM OF POINTS AND AUTHORITIES

The Plaintiffs served the Vallejo Police Officers Association (hereinafter "VPOA"), a non-party, with a subpoena for production of documents pursuant to Fed. R. Civ. P. 45. In response, the VPOA did not voice objections, ask for an extension of time or file a motion to quash. Instead, VPOA failed to produce any responsive documents or respond in any manner. This Court should compel the VPOA to respond to the subpoena.

Factual Background

This case arises from the officer-involved shooting death of Sean Monterrosa by Vallejo Police Officer Jarrett Tonn ("Officer Tonn") on June 2, 2020. Mr. Monterrosa was unarmed and kneeling on the ground when Officer Tonn, without warning, fired his silenced military style assault

1 rifle from the back seat of an unmarked Vallejo PD truck and through the windshield, striking Mr.
2 Monterrosa in the back of the head and killing him.

3 In the aftermath of the shooting, the City of Vallejo (“the City”) retained OCR group to
4 investigate the shooting. That investigation and subsequent review by Vallejo Police Chief Shawny
5 Williams determined that Officer Tonn’s use of force was unreasonable, and this led the City to seek
6 his termination. Through further investigations it was uncovered that there was a thriving culture of
7 excessive unreasonable violence among the Vallejo Police Department, and that the department had
8 a “siege mentality,” with allegations of a badge bending practice where Vallejo officers would bend
9 the points of their badge when they killed a citizen.
10

11 As a part of this investigation, the VPOA, in a letter written by their attorney, confirmed the
12 badge bending practices but attempted to frame the reason for the practice as a celebration by
13 officers of surviving a dangerous situation. Through more recent limited testimony in the Solano
14 County Superior Court, the transcript reflects that the badge bending report includes testimony from
15 former Vallejo Officer Tribble that he and Officer Gary Jones bent the badge of Jarrett Tonn.
16 VPOA has since remained evasive to further inquiry.
17

18 Plaintiffs filed their complaint against the named Defendants on August 6, 2020, followed by
19 Plaintiffs First Amended Complaint on December 22, 2020, and Plaintiffs Second Amended
20 Complaint on March 11, 2021.
21

22 On February 2, 2022, Plaintiffs noticed the City of Vallejo with nine subpoenas for production
23 of documents from individuals and entities associated with the City of Vallejo or the underlying
24 investigation of the incident, with one to the VPOA (hereinafter “the Subpoena”). The Subpoena
25 requests all correspondence, emails, communications, messages, documents, interviews or reports
26 relating in any way to Jarrett Tonn, John Whitney, and/or the practice of badge bending by union
27 members. Counsel for the City of Vallejo and Plaintiffs met and conferred by phone on February 2,
28 2022. The City of Vallejo did not object to the Subpoena to the Vallejo Police Officers’ Association

1 at that time, nor any time since then. The following week, on February 9, 2022, Counsel for Plaintiff,
2 John J. Coyle, Esq., emailed Michael L. Rains, Esq., who, based on information and belief is Counsel
3 for the VPOA, a courtesy copy of the Subpoena. *See* Exhibit 1. Mr. Rains never responded to this
4 email.

5
6 The VPOA was formally served with the Subpoena on July 5, 2022. *See* Exhibit 1. According
7 to the process server's affidavit, the subpoena was served personally on Christy Her, identified as
8 "Deputy Clerk." *Id.*

9 Despite being on notice of the Subpoena for at least six months, to date, the VPOA has not
10 produced a single responsive document, nor has Counsel for the VPOA raised any objections, nor
11 communicated in any way with Plaintiffs.

12 **Argument**

13
14 Federal Rule of Civil Procedure 45 governs the issuance of subpoenas. Under Rule
15 45(a)(1)(D) a party may issue a subpoena compelling a non-party to produce documents and tangible
16 things. Federal Rules of Civil Procedure 45 requires the subpoena's recipient to produce the requested
17 information and materials, and while they may object to all or part of a subpoena, the objection must
18 be adequately supported. Fed. R. Civ. P. 45(c)(2) and 45(e). The objection must be served before the
19 earlier of the time specified for compliance or 14 days after the subpoena is served. Fed. R. Civ. P.
20 45(d)(2)(B). Assuming that a subpoena is properly constituted and served, and no objections are
21 raised, Rule 45 requires the subpoena's recipient to produce the requested information and materials.
22

23 Even if the subpoena is objected to, this Court may compel production if the issuing party
24 shows (1) a substantial need for the material sought, (2) it cannot otherwise be obtained without undue
25 hardship, and (3) reasonable compensation is paid to the person addressed in the subpoena.

26 Fed. R. Civ. P. 45(d)(3)(C); *see U.S. v. CBS, Inc.*, 666 F.2d 364, 368-89 (9th Cir. 1987). However,
27 because the VPOA did not object, let alone object with adequate support in a timely manner, there is
28 no discernable justification for their refusal to comply.

1 Plaintiffs are entitled to requested materials and information because they are directly relevant
2 to the *Monell* claims at issue in this litigation. Further, the information is directly relevant to the
3 central issue of whether Officer Tonn or anyone else at the time of the shooting was in fact in fear of
4 immediate threat of death or bodily injury. Due to the nature of the information requested, there are
5 no other means for Plaintiffs to obtain them.
6

7 Here, the Court should issue an order compelling compliance with the subpoena. The VPOA
8 was served with a valid subpoena, and Counsel for the VPOA was put on notice of the Subpoena as
9 well. The VPOA has failed to respond entirely, much less serve objections or file a motion to quash.
10 That noncompliance has led all parties to incur unnecessary costs and deprived the Plaintiffs of
11 relevant evidence.
12

13 Conclusion

14 In light of the above, Plaintiffs respectfully ask this Court to grant their Motion to Enforce
15 the Subpoena to Vallejo Police Officers Association.
16

17 DATED: January 24, 2023
18

Respectfully submitted,

19 /s/ John J. Coyle
20 JOHN J. COYLE
21 Attorney for Plaintiffs
22 McELDREW PURTELL
23 123 South Broad Street
24 Suite 2250
Philadelphia, PA 19109
(215) 545-8800
jcoyle@mceldrewpurtell.com

25 Carla M. Wirtschafter
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28 cwirtschafter@reedsmith.com

EXHIBIT A

Civil Action No. 2:20-cv-01563

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* Vallejo Police Officers Association
on *(date)* 6-27-2022.

☒ I served the subpoena by delivering a copy to the named person as follows: Christy Her, Deputy Clerk
111 Amador Street, Vallejo, CA 94590

on *(date)* 7-5-2022; or

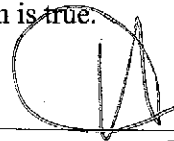
☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 07/05/2022



Server's signature

Dennis Kittelson, RPS 130422 Solano County

Printed name and title

1017 Topsail Drive
Vallejo, CA 94591

Server's address

Additional information regarding attempted service, etc.:

UNITED STATES DISTRICT COURT

for the

Eastern District of California



Monterrosa, as Admin. of the Estate of Monterrosa

Plaintiff

v.

City of Vallejo, et al.

Defendant

Civil Action No. 2:20-cv-01563

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Vallejo Police Officers Association, 1040 Colusa Street, Vallejo, CA 94590

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: All correspondence, emails, communications, messages, documents, interviews or reports relating in any way to Jarrett Tonn, John Whitney, and/or the practice of badge bending by union members.

Place: McEldrew Young Purtell Merritt
 123 South Broad Street, Suite 2250
 Philadelphia, PA 19109

Date and Time:

02/21/2022 12:02 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 2/1/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Scan Monterrosa, who issues or requests this subpoena, are:

123 S. Broad St. Suite 2250 Phila., PA 19109; jcoyle@mceldrewyoung.com; p. 215-545-8800; c. 610-291-9514

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

EXHIBIT B

John Coyle

From: John Coyle
Sent: Wednesday, February 9, 2022 4:25 PM
To: MRains@rlslawyers.com
Cc: John Coyle; MonterrosaSeanZ953188@mceldrewyoung.filevineapp.com
Subject: Courtesy copy of federal subpoena
Attachments: Subpoena_Vallejo_Police_Union.pdf

Attorney Rains:

I am aware that you have represented the Vallejo Police Officers Association in connection with investigations related to badge bending and destruction of property. Therefore, I wanted to provide you a courtesy copy of a subpoena served this week on the Vallejo Police Officer's Association.

Thank you for your attention to this matter. If you have any questions or concerns, please let me know.

John J. Coyle

Partner



**MCELDREW YOUNG
PURTELL MERRITT**

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Phone: 215-545-8800 ext. 103 | Fax: 215-545-8805

Email: jcoyle@mceldrewyoung.com

Website: mceldrewyoung.com

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Catastrophic Injury & Wrongful Death / Civil Rights / Dangerous Drugs & Devices /
Medical Malpractice / Nursing Home Fraud, Neglect & Abuse / Railroad & FELA /
Trucking & Mass Transportation / Whistleblower & Complex Litigation

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